

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD**

IN THE MATTER OF

STATE OF RHODE ISLAND,
DEPARTMENT OF LABOR & TRAINING

CASE NOS. EE-1715 and EE-3152
(Unit Clarifications)

AND

RI COUNCIL 94, AFSCME, AFL-CIO _____ :

DECISION AND ORDER

TRAVEL OF CASE

The above matter came on to be heard on two (2) separate requests for Unit Clarification (hereinafter "Petitions") for the positions of "Chief Prevailing Wage Investigator" held by Ms. Virginia Faria and "Technical Support Specialist III" held by Mr. Stephen Grant. The petition for "Technical Support Specialist III" was filed with the Rhode Island State Labor Relations Board (hereinafter "Board") on September 2, 1999; and the petition for "Chief Prevailing Wage Investigator" was filed on December 14, 1999. Both petitions were filed by Rhode Island Council 94, AFSCME, AFL-CIO (hereinafter "Union")

Pursuant to R.I.G.L. 28-7-9 (b) (5), an informal hearing was held on the petition for "Technical Support Specialist III" on November 3, 1999, and on the petition for "Chief Prevailing Wage Investigator" on February 2, 2000. Representatives of the Union and the Employer were in attendance at both informal hearings and provided information to the Board's Investigative Agent. Upon conclusion of the investigations, the Board's Agent forwarded a copy of the written reports to both the Union and the Employer. On March 12, 2001 the Employer submitted a written response to the Agent's report relative to the position of Chief Prevailing Wage Investigator; and on March 15, 2001, the Employer submitted a written response to the Agent's report relative to the position of Technical Support Specialist III. On April 17, 2001, the Board met and preliminarily determined that both positions should be accreted into the supervisory bargaining unit defined by Case No. EE-3152. The Board then held a formal, evidentiary hearing on the petition on August 2, 2001. Upon conclusion of the formal hearing, the parties filed briefs with the Board. In arriving at its Decision and Order herein, the Board has reviewed and weighed the exhibits, witness testimony, the Agent's reports, and the written briefs of the parties

FACTUAL BACKGROUND

On July 21, 1976, in Case No. EE-3152, the Board certified RIESA-Council 22, AFSCME, AFL-CIO, now known as RI Council 94, AFSCME, AFL-CIO to represent:

"All supervisory employees in the Department of Labor, excluding the Director, Deputy Director, Administrator of the Labor Relations Board and the Administrative Assistant to the Director employed by the State of Rhode Island, Department of Labor."

On July 5, 1967, in Case No. EE-1715, the Board certified the Rhode Island State Employees Association, now known as RI Council 94, AFSCME, AFL-CIO to represent:

“Departmental employees excluding Director, Deputy Director, Administrative Assistant to Director, Confidential Secretary to the Director, Executive Secretary, Assistant Executive Secretary to the State Labor Relations Board and Conciliators and Doctors employed by the Rhode Island Curative Center, Executive Assistant to the Curative Center, and Division Chiefs.”¹

SUMMARY OF TESTIMONY

Technical Support Specialist III

The Employer presented the testimony of Ms. Jean Severance, the Associate Director of the Division of Injured Workers' Services, and Mr. Walter McGarry, the Chief of Human Resources of the Department of Labor and Training. Ms. Severance testified that the position of Technical Support Specialist III, held by Mr. Grant,² has oversight for all of the computer operations for the Division of Work Force Safety and the Division of Injured Workers' Services. (TR. p. 19) Mr. Grant has five employees that report to him and to whom he assigns and reviews work. (TR, p. 19) In regards to hiring employees, Ms. Severance testified that no employees have been hired in the two years that Mr. Grant has been holding this position, but that it was her belief that he would play a role in hiring because she would rely very heavily upon Mr. Grant's technical expertise in selecting employees. (TR. p. 20) Ms. Severance meets with Mr. Grant to discuss budgets, management strategy and implementing departmental policies. (TR. p. 21) She testified that Mr. Grant would be responsible for issuing discipline to his employees, if necessary. (TR. p. 22) Ms. Severance also testified that if new employees were hired, Mr. Grant would be responsible to prepare probationary reports. (TR. p. 22) According to Ms. Severance, Mr. Grant has the authority to use independent judgment in assigning work. (TR. p. 23)

On cross examination, Ms. Severance testified that Mr. Grant spends approximately 50 percent of his time supervising and the balance of his time on computer work; such as, programming, analysis, systems integration, and purchasing. (TR. p. 25) Ms. Severance also testified to the requirements set forth in the job description for the Technical Support Specialist III. She agreed that Mr. Grant works under her general direction, with considerable latitude in the performance of his technical support activities. (TR. p. 26) She agreed that Mr. Grant plays a role in the installation and maintenance of the mainframe minicomputer and network operating system, but that his hands-on work with the computer software and hardware is a small percentage of his work. (TR. p. 27)

¹ “Departmental employees” refers to the then State of Rhode Island, Department of Labor, now known as the Department of Labor and Training.

² Mr. Grant's prior position was Chief of Data Operations, a Grade 33, and he was a member of the bargaining unit. At that time, however, Mr. Grant felt that he was doing the work of a higher classification, and he filed for a “desk audit”. The desk audit showed that Mr. Grant was indeed doing the work of a higher classification, the Technical Support Specialist III, and he was promoted to the position. As a result of the upgrade in his position, Mr. Grant was moved out of the bargaining unit.

Ms. Severance also testified that Mr. Grant has his own office, as do the five (5) other people within his unit. (TR. p. 29) Mr. Grant has not had the occasion to transfer, suspend, lay off or recall, promote or discharge any employee, although Ms. Severance testified that she would rely upon him in the event of those occurrences. (TR. p. 29) Ms. Severance stated that she did not recall telling the Board's investigator that Mr. Grant would have to seek her input prior to meting out any discipline. (TR. p. 30) Mr. Grant is responsible for making sure that employees report to work according to their contracts. (TR. p. 34) Mr. Grant has the authority to designate the appropriate time for breaks but would not have the **authority to deny breaks, because they are granted by contract. (TR. p. 34) Mr. Grant works closely with the people in his unit and is occasionally directly involved with their tasks. (TR. p. 35) Occasionally, Mr. Grant and some of the other computer employees are called into other parts of the Department for computer issues. (TR. p. 35)**

Mr. McGarry testified, that, as the Chief of Human Resources for the Department, he is very involved with job descriptions and desk audits. (TR. p. 51) Mr. McGarry testified that the Technical Support Specialist III position would be charged with filling out probationary reports for new employees, although Mr. Grant has not yet had the occasion to do so. (TR. p. 52) Mr. McGarry also testified that this position would be responsible for dealing with grievances and would be the Department's representative **in a grievance matter. (TR. p. 52) Mr. McGarry also testified that there are three levels of Technical Support Specialist (I, II and III), and that at the Tech III level employees have the oversight over a group of people in lesser capacities to make sure the work is done, scheduled properly, and to be involved in the process of selecting employees to perform those positions. (TR. p. 53)**

Mr. McGarry testified that he received a memorandum from Ronald P. Clare, the Chief of Merit Selection and Classification, regarding Mr. Grant's desk audit, which resulted in the upgrade to Technical Support Specialist III. (Employer's Exhibit #1) The desk audit indicated that Mr. Grant supervised four (4) professional/technical personnel in installing, maintaining and troubleshooting the operations system. (TR. p. 55) Mr. McGarry testified that, according to the job description, Mr. Grant would have a role in **hiring or transferring employees. (TR. p. 56) Mr. McGarry testified that he has personally had the occasion to discuss personnel problems regarding bargaining unit members with Mr. Grant, and that Mr. Grant was working on the Department's side in regards to these personnel problems. (TR. p. 57)**

On re-cross examination, Mr. McGarry testified that, prior to being upgraded to Technical Support Specialist III, Mr. Grant supervised employees and was a member of a bargaining unit. (TR. p. 62) Mr. McGarry also acknowledged that, while he has discussed personnel from Mr. Grant's unit with Mr. Grant, none of them are members of the supervisory bargaining unit, but are members of the rank and **file bargaining unit. (TR. p. 63)**

Chief Prevailing Wage Investigator

Mr. McGarry reviewed the job description for the Chief Prevailing Wage Investigator (Employer's Exhibit #2) and testified that he is personally familiar with the job description. He testified that the Chief Investigator, Ms. Faria, supervises two Prevailing Wage Examiners and a clerical worker. (TR. p. 57-58) Ms. Faria has the responsibility for grievances and discipline, but when it comes to layoffs, Ms. Faria would be constricted by labor contracts and the Rhode Island General Laws. (TR. p. 58) Ms. Faria has had the occasion to recommend the hiring of two employees and has completed **probationary reports for these employees.** (TR. p. 59) **When new employees are hired, Ms. Faria** conducts interviews and makes recommendations to her supervisor. (TR. p. 59) The employees that Ms. Faria supervises are members of a separate bargaining unit. (TR. p. 65)

DISCUSSION

Supervisory and managerial employees are generally excluded from participating in collective bargaining. A supervisory employee is any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, **or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in** connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189. (R.I. 1997).

"Managerial" employees are employees who "formulate and effectuate management policies by expressing and making operative the decisions of their employers." Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly, 659 A.2d 1104, 1107 (1995); State v. Local 2883 AFSCME, 463 A.2d 186, 190 (1983) **citing and quoting in part NLRB v. Bell Aerospace Co., 416 U.S. 267, 278 (1974).** Managerial employees must exercise discretion within or even independently of established employer policy and must be aligned with management. N.L.R.B. v. Yeshiva University, 444 U.S. 672 (1980). An employee may be excluded as managerial only if he represents management interests by taking or **recommending discretionary actions that control or implement employer policy.** Id. "Employees whose decision-making is limited to the routine discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee's activities fall outside the scope of the duties routinely performed **by similarly situated professionals will he be found aligned with management.**" Id. at 690.

Notwithstanding these general prohibitions from participating in collective bargaining, the State of Rhode Island has numerous long standing "supervisory" bargaining units, much like the one in issue in this case, EE-3152. These bargaining units are made up of employees who have some supervisory roles within their employment status: they might make probationary reports on other employees, be

responsible for issuing some level of discipline, or assist in hiring recommendations. Hiring and firing decisions are done in State service only through the “Appointing Authority”; thus none of the employees in the “supervisory” bargaining units are vested with such authority. The State’s “supervisory” units are **generally made up of middle tier professionals and supervisors, who are generally one or two steps above the rank and file members that they supervise.** The long standing nature of these units, and their wide spread use and acceptance within the State of Rhode Island’s labor relations structure thus creates an exception to the general rules prohibiting “supervisors” from participating in collective bargaining. There is no exception for “managerial employees”, who are excluded completely from collective bargaining.

FINDINGS OF FACT

1) The Respondent, State of Rhode Island, Department of Labor and Training, is an “Employer” **within the meaning of the Rhode Island State Labor Relations Act.**

2) RI Council 94 is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and all other terms and conditions of employment and of dealing with employers concerning grievances or other mutual aid and protection.

3) Within the State of Rhode Island’s employment and labor relations structure, there is a long accepted exception to the general rule that supervisors may not engage in collective bargaining, and “supervisory” units are found throughout state service.

4) On July 21, 1976, in Case No. EE-3152, the Board certified RIESA-Council 22, AFSCME, now known as RI Council 94, AFSCME, AFL-CIO to represent: “All supervisory employees in the Department of Labor, excluding the Director, Deputy Director, Administrator of the Labor Relations Board and the Administrative Assistant to the Director employed by the State of Rhode Island, Department of Labor.”

5) The bargaining unit established by EE-3152 is a supervisory unit.

6) The positions of Chief Prevailing Wage Investigator and Technical Support Specialist III are both supervisory.

7) Neither Mr. Grant nor Ms. Faria supervises any employees who are members of the bargaining unit established by EE-3152. Mr. Grant’s and Ms. Faria’s supervisory roles are limited to rank and file employees only.

CONCLUSIONS OF LAW

1) Within state service, there is an exception to the general rule that supervisors may not engage in collective bargaining and there are numerous “supervisory” units existing within state service.

2) The position of Chief Prevailing Wage Investigator held by Virginia Faria is not managerial.

3) The position of Chief Prevailing Wage Investigator held by Virginia Faria is minimally supervisory and is eligible for collective bargaining within a supervisory unit, provided that the employees being supervised are not members of the same bargaining unit.

4) The position of Chief Prevailing Wage Investigator shares a community of interest with members of the supervisory bargaining unit.

5) The position of Technical Support Specialist III held by Stephen Grant is not managerial.

6) The position of Technical Support Specialist III held by Stephen Grant is minimally supervisory and is eligible for collective bargaining within a supervisory unit, provided that the employees being supervised are not members of the same bargaining unit.

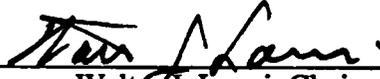
7) The position of Technical Support Specialist III shares a community of interest with members of the supervisory bargaining unit.

ORDER

1) The position of Chief Prevailing Wage Investigator, held by Virginia Faria, shall be and is hereby accreted to the certification in Case No. EE-3152.

2) The position of Technical Support Specialist III, held by Stephen Grant, shall be and is hereby accreted to the certification in Case No. EE-3152

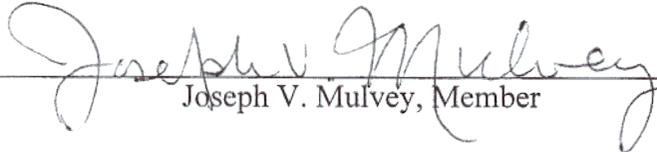
RHODE ISLAND STATE LABOR RELATIONS BOARD



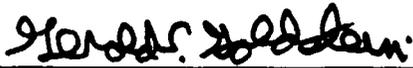
Walter J. Lanni, Chairman



Frank J. Montanaro, Member



Joseph V. Mulvey, Member



Gerald S. Goldstein, Member



Ellen L. Jordan, Member



John R. Capobianco, Member



Elizabeth S. Dolan, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated August 27, 2002

By: 
Joan N. Brousseau, Administrator